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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/869,187	08/22/2001	Thierry Lucidarme	P-6230	3276
28465	7590	02/28/2006	EXAMINER	
DLA PIPER RUDNICK GRAY CARY US LLP			AHN, SAM K	
P. O. BOX 64807			ART UNIT	
CHICAGO, IL 60664-0807			PAPER NUMBER	
			2637	

DATE MAILED: 02/28/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action  
Before the Filing of an Appeal Brief**

Application No.

09/869,187

Applicant(s)

LUCIDARME ET AL.

Examiner

Sam K. Ahn

Art Unit

2637

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 15 February 2006 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.  
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**NOTICE OF APPEAL**

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

**AMENDMENTS**

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);  
(b) ☐ They raise the issue of new matter (see NOTE below);  
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_. (See 37 CFR 1.116 and 41.33(a)).

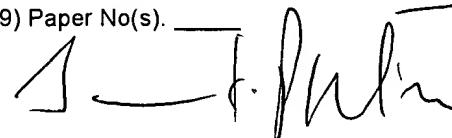
4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).  
5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.  
6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.  
The status of the claim(s) is (or will be) as follows:  
Claim(s) allowed: \_\_\_\_\_.  
Claim(s) objected to: 4-7, 9, 13-16, 18 and 19.  
Claim(s) rejected: 1-3, 8, 10-12 and 17.  
Claim(s) withdrawn from consideration: \_\_\_\_\_.

**AFFIDAVIT OR OTHER EVIDENCE**

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).  
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).  
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

**REQUEST FOR RECONSIDERATION/OTHER**

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:  
See Continuation Sheet.  
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). \_\_\_\_\_  
13. ☐ Other: \_\_\_\_\_.



**JAY K. PATEL  
SUPERVISORY PATENT EXAMINER**

Continuation of 11. does NOT place the application in condition for allowance because: it is not persuasive. The applicants argue that the receiver of Okawa could not operate in a macrodiversity mode. The examiner respectfully disagrees.

Both Zhou and Okawa teaches system implemented in a DS-CDMA. The macrodiversity mode is when soft-handover is necessary (note col.1, lines 39-40 of Zhou) to switch from one base station to another. Thus, any system implemented in the DS-CDMA would be capable of being employed in the system of Zhou, as soft-handover is necessary to support mobile stations moving to different locations covered by a different base station. From the argument that the receiver of Okawa operating in the normal operation not being combinable to the macrodiversity of Zhou, it appears that the applicants take the stance that the transmission of "different sets of information" are related to the macrodiversity mode. However, the examiner explains that the normal operation occurs after the diversity mode (or soft-handover, after S16 in Fig.9 of Zhou), hence the two teachings are combinable, wherein the normal operation takes place after the soft-handover. The examiner does not rely on Okawa for the teaching of macrodiversity mode, but the normal operation taking place after the soft-handover wherein mobile station is communicating with the target base station transmitting "different sets of information".

Applicants further argue that the target base station should present the same data rate and there is no real reason of providing a high data rate. The examiner respectfully disagrees. The base stations prior to the soft-handover and the target base station could both be providing a high data rate. There is no reason as to why only the target base station would be using the system of Okawa. Hence, the base stations (in S3 in Fig.9 of Zhou) could well be capable of supporting high data rate of Zhou. Therefore, the examiner maintains the rejection .